

Dated: July 18, 2000.

**R. Roger Majak,**

*Assistant Secretary for Export Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 648

[Docket No. 990713190-0155-02; I.D. 041599B]

RIN 0648-AH63

### Fisheries of the Northeastern United States; Amendment 1 to the Fishery Management Plan for the Atlantic Bluefish Fishery; Spiny Dogfish Fishery Management Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** NMFS issues this final rule to implement approved measures contained in Amendment 1 (Amendment 1) to the Fishery Management Plan for the Atlantic Bluefish Fishery (FMP). Amendment 1 contains a number of measures requiring regulatory implementation to control fishing mortality on Atlantic bluefish (bluefish). This rule implements permit and reporting requirements for commercial vessels, dealers, and party/charter boats; implements permit requirements for bluefish vessel operators; establishes a Bluefish Monitoring Committee (Committee) charged with annually recommending to the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) the total allowable landings (TAL) and other restrictions necessary to achieve the target fishing mortality rates (F) specified in the FMP; establishes a framework adjustment process; establishes a 9-year stock rebuilding schedule; establishes a commercial quota with state allocations; and establishes a recreational harvest limit. The purpose of this rule is to control fishing mortality of bluefish and rebuild the stock. Also, this rule makes technical amendments to the regulations implementing the Spiny Dogfish Fishery

Management Plan. In addition, this rule makes technical amendments to crossreferencing regulations managing the American lobster fishery. Furthermore, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections.

**DATES:** This rule is effective August 25, 2000.

**ADDRESSES:** Copies of Amendment 1, its Regulatory Impact Review, the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901-6790.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 978-281-9104.

**SUPPLEMENTARY INFORMATION:** This final rule implements the measures to control fishing mortality of bluefish contained in Amendment 1, which were approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 29, 1999. Amendment 1 also addresses the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act. Two primary examples of these requirements are establishing a rebuilding plan to rebuild the bluefish stock from an overfished condition and describing and identifying essential fish habitat (EFH) for bluefish. As part of the rebuilding plan, Amendment 1 contains a new overfishing definition for the bluefish stock and a 9-year rebuilding schedule. The rebuilding plan was also approved by NMFS. The overfishing definition is not being codified in regulations. NMFS did not approve all of Amendment 1. NMFS disapproved the *de minimus* provision related to state allocations of the commercial quota, the portion of the essential fish habitat (EFH) section assessing the effects of fishing gear on bluefish EFH,

and the description and analysis of fishing communities. All of the other measures contained in Amendment 1, as originally submitted, were approved. A proposed rule to implement these measures was published on August 23, 1999 (64 FR 45938).

The *de minimus* provision, which would have exempted states receiving less than 0.1 percent of the overall allocation from participating in the state allocation system, was disapproved because it is inconsistent with National Standard 1 of the Magnuson-Stevens Act, which requires that management measures prevent overfishing. This provision lacks any clear obligation on the part of the *de minimus* state to close its commercial bluefish fishery once its quota is harvested. This could result in a state's *de minimus* quota being rapidly exceeded and could result in overfishing of the bluefish stock.

A portion of the EFH provisions were disapproved because Amendment 1 failed to list and to consider adequately the potential adverse impacts of all fishing gear used in the waters described as EFH, particularly those waters under state jurisdiction. A significant portion of bluefish EFH occurs within state waters and the Council has indicated that there is some linkage between juvenile bluefish and submerged aquatic vegetation (SAV). Amendment 1 indicates that there are impacts to SAV from certain estuarine fishing gear. However, these gear are not listed in Section 2.2.3.6 (Fishing Gear Used Within the Bluefish Range), their potential impacts to bluefish EFH are not assessed in Section 2.2.3.7 (Fishing Impacts to Bluefish EFH), nor are the measures for managing potential adverse impacts considered in Section 2.2.4 (Options for Managing Adverse Effects from Fishing). These three sections of the EFH designation in the amendment were, therefore, disapproved.

The description and analysis of fishing communities was disapproved because the communities involved in the present day fishery are not sufficiently identified and the amendment does not describe or consider impacts on recreational fishing communities, such as Ocean City, Maryland, Virginia Beach, Virginia, or Oregon Inlet, North Carolina. The fishing communities section of Amendment 1 is based on the 1993 surveys of the Mid-Atlantic commercial fishing communities by McCay et al. Dependence of communities on the fishery is not assessed or considered, and the requirements of section 303(a)(9) and national standard 8 are not satisfied.

Details concerning the justification for and development of Amendment 1 and the implementing regulations were provided in the notice of availability (NOA) of Amendment 1 (64 FR 23260, April 30, 1999) and in the preamble to the proposed rule (64 FR 45938, August 23, 1999) and are not repeated here.

### Approved Measures

#### *Overfishing Definition and Rebuilding Schedule*

Amendment 1 revises the definitions of overfishing and overfished in the FMP to include an F and biomass (B) component, respectively. Overfishing is defined as occurring when F is greater than the maximum F threshold, specified as  $F_{msy} = 0.4$ ; and the bluefish stock is considered overfished when biomass is less than the minimum biomass threshold, specified as  $1/2B_{msy} = 118.5$  million (mil) lb (53,750 mt). The long-term F target is 90 percent of  $F_{msy}$  and the long-term B target is  $B_{msy}$ . The overfishing definition contained in Amendment 1 is not codified in regulations.

In accordance with § 648.160(a), the rebuilding plan provides for the bluefish stock to be rebuilt to  $B_{msy}$  over a 9-year period. In the first (1999) and second (2000) years of rebuilding, F remained/ remains at the 1998 level,  $F=0.51$ ; in years 3 through 5 (2001, 2002, and 2003), F will be reduced to  $F=0.41$ ; and in years 6 through 9 (2004, 2005, 2006, and 2007), F will be reduced to  $F=0.31$ . Once rebuilding is achieved, F will be set at  $F=0.36$ , and continue to be that value as long as the stock is not overfished.

The Council's analysis of the impacts of the rebuilding program was based on the 9-year period for fishing years 1999 through 2007. Although the rebuilding plan was approved on July 29, 1999, NMFS did not implement the plan in 1999 in Federal waters because of delays in publishing this final rule. However, the states participating in the bluefish fishery took action for 1999 in accordance with the rebuilding schedule of Amendment 1 through the ASMFC and their own existing administrative programs for managing quotas in the commercial fishery for bluefish. Therefore, fishing year 2000 will be the second year of the rebuilding plan.

#### *Annual Adjustment Process and Bluefish Monitoring Committee*

This final rule establishes a Bluefish Monitoring Committee that is a joint committee of the Council and the Commission made up of staff representatives of the Mid-Atlantic,

New England, and South Atlantic Fishery Management Councils, NMFS Northeast Regional Office, NMFS Northeast Fisheries Science Center, and the Commission. The Committee will review annually the best available data and recommend commercial (annual quota, minimum fish size, and minimum mesh size) and recreational (possession and size limits, and seasonal closures) measures designed to ensure that the F for bluefish for that given year is not exceeded.

#### *EFH for Bluefish*

Specific description and identification of EFH for bluefish that is contained in Section 2.2.2.2 of Amendment 1 was approved. The Council did not identify any habitat areas of particular concern for bluefish.

#### *Recreational Harvest Limit and Commercial Quotas*

This final rule establishes a procedure to specify an annual coastwide harvest level that is to be divided into two separate TAL values, one each for the recreational and commercial sectors. The relative shares of the annual coastwide harvest level for the recreational and commercial sectors are 83 and 17 percent, respectively. These values are based on the average catch composition of the two sectors during the 1981 through 1989 fisheries. The commercial TAL is further allocated to the states from Maine through Florida based on their percentage share of commercial landings for the period 1981 through 1989. However, this rule provides for an exception to the split of the annual coastwide harvest level between 83 percent of the recreational sector and 17 percent for the commercial sector. If 17 percent of the annual coastwide harvest level for a given year is less than 10.5 million lb (4.8 million kg) and the recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial TAL may be allocated up to 10.5 million lb (4.8 million kg) (the average commercial landings for the period 1991 through 1996) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL. This strategy was adopted to ensure that commercial landings would not be unduly constrained under a low annual coastwide harvest level and a proportionally low recreational landing. The annual coastwide harvest limit will be set annually, based on the F values specified in the rebuilding schedule, and a target  $F=0.36$ , once rebuilding is achieved.

#### *Allocations for the Commercial Fishery*

For fishing year 1999, the states implemented a TAL of 36.84 million lb (16.71 million kg), consistent with the first year of the rebuilding plan approved under Amendment 1 (see § 648.160(a)). The commercial fishery was allocated 9.583 million lb (2.69 million kg). State-by-state allocation of the commercial TAL was based on the percentages listed in § 648.160(e)(1).

#### *Framework Adjustment Process*

In addition to the annual review and modifications to management measures associated with the Monitoring Committee process, Amendment 1 and the final rule set forth procedures allowing the Council to add or modify management measures through a streamlined public review process called a framework adjustment process. As such, management measures that have been identified in Amendment 1 could be implemented or adjusted at any time during the year following consideration of the measures and associated analyses during at least two Council meetings. The recommended management measures may then be implemented through a final rule without first publishing a proposed rule. The measure identified in Amendment 1 add gear restrictions, minimum and maximum fish size, permitting restrictions, changes in the recreational possession limit, recreational and commercial seasons, closed areas to address overfishing if it is deemed necessary in the future, description and identification of EFH and fishing gear management measures that impact EFH, and description and identification of habitat areas of particular concern.

#### *Permit and Reporting Requirements*

This final rule adds permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial vessels, charter and party boats, dealers, and vessel operators, and new reporting requirements for commercial and charter/party boat vessels and dealers. In addition to logbook reporting, dealers will be required to participate in the Northeast Interactive Voice Reporting (IVR) system to assure timely reports for purposes of quota monitoring.

Implementation of a commercial vessel permitting system represents a modification of the present system where individuals, and not vessels, are issued a permit to sell bluefish. Under bluefish regulations prior to Amendment 1, any person selling a

bluefish harvested from the exclusive economic zone is identified as a commercial fisherman and must have had a commercial fishing permit issued by a state or by NMFS that allows the sale of bluefish (i.e., the individual is licensed). The new management measure allows the sale of bluefish harvested in Federal waters only from vessels issued a Federal permit. The Council believes that the bulk of the bluefish that enters the market is harvested by commercial vessels. However, at Council and committee meetings, it has been noted that certain individuals, such as those who fished from a vessel they did not own or operate and then sold their catch, would be affected by the changeover to a vessel permit. These individuals would be subject to the recreational possession limit and would no longer be able to sell bluefish.

This rule also makes technical amendments to the regulations implementing the Spiny Dogfish FMP published on January 11, 2000, at 65 FR 1557 and whose effectiveness was delayed, first, to March 15, 2000 (65 FR 7461, February 15, 2000), second, to March 27, 2000 (65 FR 15110, March 21, 2000), and third, to April 3, 2000 (65 FR 16844, March 30, 2000). The final rule implementing the Spiny Dogfish FMP inadvertently removed the requirement contained in § 648.5 for surf clam and ocean quahog operators to obtain an operator permit. This final rule corrects the regulations in § 648.5(a) by adding surf clam and ocean quahog to the list of species identified.

In addition, the final rule published on December 6, 1999 (64 FR 68228), implemented measures to manage the American lobster fishery in the EEZ from Maine through North Carolina. The final regulations removed part 649 of 50 CFR Chapter VI. However, a crossreference to part 649 contained in § 648.5 was not removed at the time of implementation of the final rule. This final rule removes the crossreference to part 649.

### Comments and Responses

Ten written comments on Amendment 1 were received by NMFS during the comment period established by the NOA for Amendment 1, which ended June 29, 1999. These comments were considered by NMFS before it partially approved Amendment 1 on July 29, 1999. Those comments received during the comment period on Amendment 1 are addressed here.

NMFS received one additional comment on the proposed rule during the comment period ending on October 7, 1999. Because the comment period

was distinct from, and followed the comment period for the amendment, the comment received during the proposed rule period was not considered in NMFS' determination to partially approve Amendment 1. This comment is addressed here.

*Comment 1:* Two commenters considered the EFH portion of the Amendment to be overly broad and to exceed the intent of Congress. The commenters specifically cited the breadth of EFH designations, noting that EFH appeared to be designated in an arbitrary manner, over the range of the species, and included coastal state and estuarine waters. One commenter notes that NMFS and the Council should clarify and elaborate on its views as to how the Amendment relates to the EFH consultation and recommendation requirements.

*Response:* The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. The EFH regulations explain that this definition should be interpreted to include associated physical, chemical and biological properties that make the habitat appropriate for use by the species and may include aquatic areas historically used by fish where appropriate. The geographic extent of EFH for a species should be based on the habitat necessary to support a sustainable fishery and the managed species contribution to a healthy ecosystem, and can include state and Federal waters. The Council's EFH description and identification are consistent with these requirements. The information that the Council used for EFH designation was primarily species distributions and relative abundance data, which would be classified as "Level 2" information under the EFH regulations (50 CFR 600.815). The use of this data in determining EFH is fully explained within the text of the amendment. Upon approval of the EFH designations, Federal agencies must consult with NMFS regarding any action that may adversely affect EFH, and NMFS must provide conservation recommendations regarding any Federal or state agency action that would adversely affect EFH, pursuant to section 305(b) of the Magnuson-Stevens Act.

*Comment 2:* A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the Amendment are not based on the best available science, nor sufficiently supported. Two commenters contended that the recommended measures do not take into consideration current

practices, are likely to be in conflict with measures being pursued under other regulatory programs, and may cause severe over-regulation. One commenter also stated that the Magnuson-Stevens Act did not empower the Fishery Management Councils to address non-fishing activities.

*Response:* NMFS disagrees that the conservation and enhancement recommendations for non-fishing impacts to EFH are not based on the best available science. The information presented in this section of the Amendment is well researched and substantiated. Discussions of actions with the potential to adversely affect EFH and accompanying conservation and enhancement recommendations were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of EFH." This information is exemplary and provided to assist non-fishing industries in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these or similar recommendations are needed or implemented.

*Comment 3:* Two commenters stated that the Amendment contains no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenters suggested that the consultation and conservation recommendation provisions of the Act will be burdensome and unworkable. One commenter contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

*Response:* The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. "Adverse effects," as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that may have a reasonably foreseeable adverse effect require consultation. The EFH regulations provide for streamlined consultation procedures in which the level of

consultation for any action is commensurate with the degree of potential impact to EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

*Comment 4:* One commenter expressed concern regarding the inclusion of two frameworkable measures: (1) "Description and identification of EFH," and (2) "Description and identification of habitat areas of particular concern." The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule without first publishing them as a proposed rule. The commenter states that non-fishing interests lack representation at Council meetings and, therefore, will not have an opportunity to comment on actions regarding EFH. The commenter asserts that the framework adjustment process for these two measures will foster inconsistencies in treatment among the different NMFS Regions and the Councils, thereby complicating the EFH consultation process. The commenter requests that the inclusion of these measures be delayed until revision of NMFS EFH interim final regulations and guidelines.

*Response:* The framework adjustment process requires the Councils, when making specifically allowed adjustments to the FMP, to develop and to analyze the actions over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings through publication of the meeting agenda in the **Federal Register**, the proposals and the analysis, and provide an opportunity to comment on the proposals prior to, and at, the second Council meeting. Commenters may also submit written comments to the Council before or during the second Council meeting. Upon review of the analysis and public comment, the Council may recommend to the Administrator, Northeast Region, NMFS (Regional Administrator), that the measures be published as a final rule, if certain conditions are met. NMFS may either publish the measures as a final rule, or as a proposed rule if NMFS or the Council determines that additional public comment is needed. Within the guidelines, modifications to EFH and Habitat Areas of Particular Concern can be implemented in an expedited manner while providing

ample notice and opportunity for comment by all stakeholders.

*Comment 5:* A commenter stated that the Amendment generally failed to address the potential for significant adverse impacts of the Amendment on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act.

*Response:* The description and identification of aquatic areas or substrate as EFH for a species or life stage does not carry with it any regulation or restriction of any activity. Following designation of EFH, NMFS, on behalf of the Secretary, is required to minimize, to the extent practicable, adverse impacts to EFH from fishing, and Federal action agencies are required to consult with NMFS on any action it authorizes, funds, or undertakes that may adversely affect EFH. NMFS' regulations of fishing in the EEZ or another action agency's regulation of non-fishing activities must comply with all applicable laws, such as the National Environmental Policy Act (NEPA) and the Regulatory Flexibility Act (RFA).

*Comment 6:* One commenter asserts that the Amendment is inconsistent with the Magnuson-Stevens Act national standards 1, 2, and 7.

*Response:* In regard to national standard 1, the Amendment utilizes a NMFS-certified overfishing definition developed by scientists from the Universities of Rhode Island and Connecticut. The overfishing definition was also adopted by the Bluefish Technical Monitoring Committee and approved by the Science and Statistical Committee of the Council. The rebuilding schedule will allow the stock of Atlantic bluefish to rebuild to a level of maximum sustainable yield in 9 years. The overfishing definition and rebuilding strategy are consistent with national standard 1. Because the overfishing definition for bluefish contains a  $B_{\text{threshold}} = 1/2B_{\text{msy}}$  and  $B_{\text{target}} = B_{\text{msy}}$ , and the  $F_{\text{target}}$  is less than  $F_{\text{msy}}$ , the definition complies with national standard 1 guidelines. Also, the rebuilding schedule for bluefish is in compliance with national standard 1 because it is less than 10 years, but also takes into account the needs of fishing communities (especially in years 1 and 2 by not having a lower  $F$  value). The Amendment is consistent with national standard 2 since it relies on the best scientific information available.

The commenter does not elaborate upon the assertion that the Amendment violates national standard 7, so NMFS assumes, for the purpose of responding to their comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally

required consultation procedures. NMFS has determined that the Amendment is consistent with the Magnuson-Stevens Act, including national standard 7. Interagency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act. As explained earlier, EFH consultations will be incorporated whenever practicable into existing review processes and be accomplished within existing process time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The EFH regulations at 50 CFR 600.920 suggest that NMFS be consulted as early as possible in project planning so that appropriate conservation measures can minimize the potential for adverse effects to the EFH. The Amendment contains conservation recommendations that are appropriate for many Federal actions, and that can also serve as guidelines during project planning.

*Comment 7:* One commenter believed the Council should have adopted a 5-year rebuilding strategy in lieu of a 9-year strategy explaining that a 5-year plan would end overfishing and begin recovery as soon as possible. In addition, the 5-year rebuilding schedules evaluated by the Council show that the recovery alternatives generate similar and sometimes greater cumulative commercial revenues and cumulative recreational harvest limits compared to the preferred alternative.

*Response:* The Council believes and NMFS agrees that the 9-year strategy could mitigate short-term potential negative economic impacts to the recreational and, under certain scenarios, to the commercial sector. The Amendment will allow a transfer of up to 10.5 million lb (4.8 million kg) to the commercial sector if the recreational sector is not projected to take their share of the quota. In the years that this entire amount can be transferred, there is no difference in revenues to the commercial sector, because under any rebuilding strategy this sector would be able to fish the 10.5 million lb (4.8 million kg) cap. However, in years when the transfers cannot take place the commercial quotas would be substantially less under the 5-year plan as opposed to the 9-year plan. Recreational revenues are usually less for the first five years under the 5-year rebuilding plans, but much greater thereafter. NMFS recognizes that overfishing may occur in 1999 and 2000 although given recent landings information this seems highly unlikely. Recreational landings have been decreasing and were roughly half of the

present quota in 1997. However, NMFS believes that the Council, in adopting the 9-year strategy, is attempting to end overfishing as soon as possible while maintaining an optimum yield that will not unduly harm participants in the fishery.

*Comment 8:* Two commenters were concerned about the potential economic and social impacts of a minimum recreational size limit and effects of the size limit on communities.

*Response:* This is a moot issue since the Amendment does not implement a size limit, only a mechanism for doing so through the framework or the annual adjustment process. The required analysis would be completed at that time. Shore based fisheries are regulated by state actions that may complement Amendment 1, but are not directly regulated by the FMP.

*Comment 9:* One commenter raised concern with transferring the projected recreational surplus of up to 10.5 million pounds to the commercial quota. The commenter believes that this will increase the length of time required for the stock to rebuild.

*Response:* The Council adopted this strategy to ensure that commercial landings would not be unduly constrained under low allowable harvest levels and proportionally low recreational landings. Commercial and recreational bluefish industry representatives who attended Council and committee meetings on Amendment 1 support this compromise. The recreational and commercial quotas would be set annually based on the fishing mortality rates specified in the rebuilding schedule. This matter is discussed in length in the Initial Regulatory Flexibility Analysis (IRFA) summary contained in the classification section of the proposed rule.

*Comment 10:* One commenter had concerns regarding National Standard 8, which requires management measures to consider effects on communities, and section 303(a)(9), which requires a fishery impact statement.

*Response:* The description and analysis of fishing communities was disapproved because the communities involved in the present day fishery are not sufficiently identified and Amendment 1 does not describe or consider impacts on recreational fishing communities, such as Ocean City, Maryland, Virginia Beach, Virginia, or Oregon Inlet, North Carolina. The fishing communities section of Amendment 1 is based on the 1993 surveys of the Mid-Atlantic commercial fishing communities by McCay et al. Dependence of communities on the fishery is not assessed or considered,

and the requirements of Section 303(a)(9) and National Standard 8 have not been satisfied. However, NMFS informed the Council of these deficiencies of the Amendment and expects the Council to provide this type of analysis in the future.

*Comment 11:* One commenter believed that charter/party vessels should not be subject to the monthly vessel trip report (VTR) requirements due to the existing Marine Recreational Fisheries Statistics Survey and the apparent lack of rationale for requiring monthly logbooks. In addition, the commenter states that hull identification numbers should be included as a required element of permits and reporting logbooks, and that Amendment 1 should not be inconsistent with the Atlantic Coastal Cooperative Statistics Program (ACCSP) system.

*Response:* The VTRs for charter/party vessels are currently necessary to ensure appropriate quota monitoring in fisheries. The VTR is an established system of mandatory reporting familiar to and used by the Council for quota and total allowable catch monitoring purposes. This reporting requirement will help satisfy the required provision of the Magnuson-Stevens Act to describe and to quantify trends in landings of the commercial, recreational and charter fishing sectors. Hull identification numbers, either U.S. Coast Guard (USCG) documentation number or state registration number, are required information on VTRs, and this will be clarified in the regulatory text. While the ACCSP may establish preferable monitoring systems, the program is not operational in the region. Until such time as the ACCSP establishes an appropriate monitoring system, the VTRs are necessary. The data collection aspects of Amendment 1 are subject to the framework adjustment process to allow for conversion to the ACCSP program in the future.

#### Changes From the Proposed Rule

In § 648.4(a)(8)(ii), the phrase “to fish for bluefish” was expanded to read “to fish for, possess, or land Atlantic bluefish in or from the EEZ.”

In § 648.7, paragraph (b) was revised to add spiny dogfish to the list of species for which permit conditions apply. The final rule implementing the Spiny Dogfish FMP became effective on April 3, 2000, after the proposed rule for Amendment 1 to the Bluefish FMP was published.

Several paragraphs in § 648.7 were modified to make it easier for the public to understand which dealers are affected by the reporting requirements specified

in that part. The current mandatory dealer reporting system was incorporated into each fishery management plan through plan amendments that occurred over a period of years. As amendments were implemented this section listed by species the dealers subject to this requirement. Now that the requirement has been incorporated into all of the Northeast Region fishery management plans, it is not necessary to list dealer permits by species. Therefore, § 648.7(a)(1)(i) has been modified to show it applies to “All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit;” § 648.7(a)(3)(i) has been modified to show that it applies to “All dealers issued a dealer permit under this part.”

For the same reason, a similar modification was made to § 648.7(b)(1)(i) to clarify that the vessel reporting requirement applies to “The owner or operator of any vessel issued a permit under this part.”

In § 648.14(w)(2), the phrase “Atlantic bluefish taken from a fishing vessel” was expanded to read “Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ.” In § 648.14(w)(3), the phrase “dealer or transferee has a dealer permit issued under § 648.6(a)” was replaced by “vessel has a valid bluefish permit issued under § 648.4(a)(8)(i).” The prohibition at § 648.14(w)(7) was removed and replaced by “To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the **Federal Register** stating that the commercial quota has been harvested.” A new paragraph was added at § 648.14(w)(8) that prohibits dealers from purchasing bluefish from federally-permitted vessels after publication of a notification stating that the commercial quota has been harvested.

Section 648.160(d) is revised to indicate that NMFS will only issue one proposed rule and final rule annually in the **Federal Register** to include both the commercial and recreational measures. The proposed rule for Amendment 1 indicated that a separate proposed and final rule would be issued annually for recreational fishing measures.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number

0648-0202 for §§ 648.91 through 648.94, and § 648.96.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

#### **Classification**

NMFS determined on July 29, 1999, that Amendment 1 that this rule implements is consistent with the Magnuson-Stevens Act and other applicable laws, with the exception of the de minimus provision, the fishing communities section, and the portion of the EFH section dealing with the effect of fishing gear on bluefish EFH.

This rule has been determined to be significant for the purposes of Executive Order 12866.

The Council prepared an FEIS for this Amendment; an NOA for the FEIS was published in the **Federal Register** on June 25, 1999. NMFS determined upon review of Amendment 1 and its accompanying FEIS and public comments that approval and implementation of Amendment 1 is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to halt overfishing and to rebuild the Atlantic bluefish stock; protect marine mammals and endangered species; provide economic and social benefits to the fishing industry in the long term; and contribute to better balance in the ecosystem in terms of the Atlantic bluefish resource.

In compliance with the RFA, the Council prepared and NMFS adopted an IRFA contained in Amendment 1 that describes the economic impacts of the proposed rule, if adopted, on small entities. The final regulatory flexibility analysis (FRFA) consists of the IRFA, public comments and responses thereto, the analysis of impacts and alternatives in Amendment 1 to the Atlantic Bluefish FMP, a description of the need for, and objectives of the rule found in the preamble of the proposed rule, and a summary of the impacts on small entities as published in the classification section of the proposed rule, all of which are not repeated here. A summary of the FRFA is as follows:

#### *Need for and Objectives of the Rule*

NMFS is issuing this final rule to implement approved management measures contained in Amendment 1 to the Bluefish FMP. The purpose of this rule is to control fishing mortality of bluefish and begin rebuilding the stock.

#### *Public Comments*

There were several public comments submitted during the public comment period for the proposed rule that related to impacts on small entities, including comments 5 and 8. The public comments and responses thereto are contained in the preamble to this rule. No changes were made to the proposed rule.

#### *Number of Small Entities*

In the full permit year of 1998, there were 1,126 Federal bluefish permits issued to individuals. All of these individuals readily fall within the definition of a small business. NMFS estimated that 190 Federal permits held by individuals are associated with commercial vessel ownership. The number of recreational vessels that sell their catch and could apply for a vessel permit is unknown.

#### *Projected Reporting and Recordkeeping Requirements*

This rule would add bluefish permit and reporting requirements that mirror similar requirements for other Northeast fisheries. These measures include new permitting requirements for Federal commercial bluefish vessels, bluefish charter and party boats, bluefish dealers, and bluefish vessel operators, and new reporting requirements for bluefish dealers and owners or operators of commercial bluefish vessels and bluefish charter and party boats. In addition to logbook reporting, dealers would be required to participate in the IVR system to assure timely reports for purposes of quota monitoring.

#### *Cost of Compliance*

The alternatives concerning vessel and dealer permitting and reporting have no effect on revenues and represent a minute portion of the cost of doing business. The Council estimated that 249 new vessel permit applicants, 500 new charter/partyboat vessel permit applicants, and 97 dealers would each spend \$7.50 to apply for a permit and \$20.00 per year for reporting requirements. In addition, no special knowledge is required to fill out the permit application. No additional costs of compliance would result from the implementation of the preferred or other alternative.

#### *Steps Taken to Minimize Economic Impacts*

This final rule minimizes economic impacts on small entities by implementing a 9-year rebuilding plan. Rebuilding may occur faster if fishing for bluefish in Federal waters were prohibited altogether. However, the

Council recommended and NMFS implements through this rule a 9-year rebuilding program that takes into account the economic needs of fishery participants to continue some level of fishing for bluefish while also meeting the statutory requirement to rebuild the fishery in as short a time frame as possible but within 10 years.

#### *Reason for Selecting Alternatives in the Rule and Reasons for Rejecting Other Alternatives*

The alternative rebuilding schedules were rejected, because they would not have provided the same stability in projected yields, and would have resulted in greater short-term economic losses for the commercial sector, compared to the alternative implemented by this rule.

The quota allocation between the commercial and recreational fisheries implemented by this rule was chosen because it was based on time period (1981-1989) that reflects the composition of the fishery when bluefish stock abundance was fairly high and stable. The recreational harvest limit of 10 fish was chosen in order to keep recreational harvest within its allocation over the course of the fishing year. The quota allocation periods other than 1981-1989 that were evaluated for the basis of any split between the commercial and recreational sectors were either too short (e.g., 1985-1989) or were based partly on catches attained during periods of relatively low stock abundance (e.g., 1981-1993); therefore they were rejected.

The commercial vessel, charter/party boat and dealer permitting and reporting requirements implemented by this rule were chosen over the status quo (individual permits) so that NMFS will be better able to monitor the quota, to close the commercial fishery when the quota is reached, and evaluate harvest capacity. The Council also considered the status quo alternative of continuing the issuance of permits to individuals. Although this would mitigate the economic impacts of the proposed vessel permitting scheme, the Council notes that under individual permitting, the monitoring of the quota system would likely be undermined, because it would be very difficult to contact individuals with timely notifications or obtain information required for quota reports. Implementation and enforcement of commercial closures and commercial minimum fish sizes that are essential to managing the fishery would be compromised by the continued permitting of individuals. Furthermore, harvesting capacity or fishing power could not be evaluated under a regime

of individual permits. The ability to monitor and to enforce commercial fishing quotas is essential to meeting the agency's fishery conservation and management responsibilities under the Magnuson-Stevens Act.

**Paperwork Reduction Act**

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains 8 new collection-of-information requirements subject to the Paperwork Reduction Act. These collection-of-information requirements have been approved by the OMB, and the OMB control numbers and public reporting burden are listed as follows:

Bluefish vessel permits, OMB control number 0648-0202 (30 minutes/response).

Bluefish dealer permits, OMB control number 0648-0202 (12 minutes/response).

Bluefish vessel identification, OMB control number 0648-0202 (45 minutes/response).

Employment section of the Processed Products Report, OMB control number 0648-0202 (2 minutes/response).

State quota transfer applications, OMB control number 0648-0202 (60 minutes/response). Vessel trip reports, OMB control number 0648-0212 (5 minutes/response).

Dealer reports through IVR system, OMB control number 0648-0229 (4 minutes/response).

Dealer reports for NOAA Form 30-80, OMB control number 0648-0229 (2 minutes/response).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

**List of Subjects**

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 17, 2000.

**Andrew A. Rosenberg,**  
Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

**15 CFR Chapter IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entry for § 648.7 and adding a new entry for § 648.160 to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR	*
648.7	* * * * *
648.160	* * * * *

**50 CFR Chapter VI**

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Bluefish Committee" is removed and a new definition for "Bluefish Monitoring Committee" is added in alphabetical order to read as follows:

**§ 648.2 Definitions.**

**Bluefish Monitoring Committee** means a committee made up of staff representatives of the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council, and South Atlantic Fishery Management Council, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries

Science Center, and the Commission. The Mid-Atlantic Fishery Management Council's Executive Director or a designee chairs the committee.

\* \* \* \* \*

3. In § 648.4, paragraphs (a)(8), (b) and (c)(2)(i) are revised, and paragraph (c)(3) is removed as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \* \* \*  
(8) *Atlantic bluefish vessels.* (i) *Commercial.* Any vessel of the United States including party and charter boats not carrying passengers for hire, that fishes for, possesses, or lands Atlantic bluefish in or from the EEZ in excess of the recreational possession limit specified at § 648.164 must have been issued and carry on board a valid commercial bluefish vessel permit.

(ii) *Party and charter vessels.* Any party or charter boat must have been issued and carry on board a valid party or charter boat permit to fish for, possess, or land Atlantic bluefish in or from the EEZ if it is carrying passengers for hire. Persons on board such vessel must observe the possession limits established pursuant to § 648.164, and the prohibitions on sale specified in § 648.14(w).

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, black sea bass moratorium or bluefish commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the

respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, spiny dogfish, or bluefish, either directly or through a coastwide allocation, is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is conducted exclusively within state waters. If the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3' N. lat., any vessel owners that hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their moratorium Black Sea Bass permit by certified mail addressed to the Regional Administrator and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

(c) \* \* \*

(2) \* \* \*

(i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's

current party/charter boat license (if applicable), home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category, if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; if there is more than one owner, the names of all owners having a 25-percent interest or more; and permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

\* \* \* \* \*

4. In § 648.5, paragraph (a) is revised to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, spiny dogfish, or bluefish, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit. An operator's permit issued pursuant to part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

\* \* \* \* \*

5. In § 648.6, paragraph (a) is revised to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, spiny dogfish, or bluefish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species.

\* \* \* \* \*

6. In § 648.7, in paragraphs (a)(1)(i) and (a)(3)(i) the first sentence is revised and in paragraph (b)(1)(i) the heading is removed and (b)(1)(i) is revised as follows:

**§ 648.7 Record keeping and reporting requirements.**

(a) \* \* \*

(1) \* \* \*

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surf clam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, which ever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. \* \* \*

\* \* \* \* \*

(3) \* \* \*

(i) All dealers issued a dealer permit under this part, with the exception of those processing only surf clams or ocean quahogs, must complete the "Employment Data" section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. \* \* \*

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) The owner or operator of any vessel issued a permit under this part must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. With the exception of those vessel owners or operators fishing under a surf clam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name, USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count,



if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

7. In § 648.11 the first sentence of paragraph (a) and paragraph (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, or NE multispecies, or monkfish, or Atlantic mackerel, squid, butterfish, or scup, or black sea bass, or bluefish, or spiny dogfish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. \* \* \*

\* \* \* \* \*

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, or a scup moratorium permit, or a black sea bass moratorium permit, or a bluefish permit, or a spiny dogfish permit, if requested by the sea sampler/observer also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or spiny dogfish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, or black sea bass, or bluefish, or spiny dogfish, or other specimens taken by the vessel.

\* \* \* \* \*

8. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (bluefish), K (spiny dogfish), of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder, the scup, the black sea bass, the spiny dogfish, and the bluefish fisheries.

\* \* \* \* \*

9. In § 648.14, paragraphs (w)(1) through (5) are revised and paragraphs

(w)(6), (w)(7), (w)(8), and (x)(9) are added to read as follows:

\* \* \* \* \*

§ 648.14 Prohibitions.

(w) \* \* \*

(1) Possess in or harvest from the EEZ, Atlantic bluefish, in excess of the daily possession limit found at § 648.164, unless the vessel is issued a valid Atlantic bluefish vessel permit under § 648.4(a)(8)(i) and the permit is on board the vessel and has not been surrendered, revoked, or suspended.

(2) Purchase, possess or receive for a commercial purpose, or attempt to purchase, possess, or receive for a commercial purpose, in the capacity of a dealer, except solely for transport on land, Atlantic bluefish taken from a fishing vessel that were harvested in or from the EEZ unless issued, and in possession of, a valid Atlantic bluefish fishery dealer permit issued under § 648.6(a).

(3) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, Atlantic bluefish that were harvested in or from the EEZ, unless the vessel has been issued a valid bluefish permit under § 648.4(a)(8)(i).

(4) Land Atlantic bluefish for sale in a state after the effective date of the notification in the Federal Register, pursuant to § 648.161(b), which notifies permit holders that the commercial quota is no longer available in that state.

(5) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to an Atlantic bluefish permit issued under § 648.4(a)(8).

(6) Land Atlantic bluefish for sale after the effective date of the notification in the Federal Register pursuant to § 648.161(a), which notifies permit holders that the Atlantic bluefish fishery is closed.

(7) To purchase or otherwise receive for a commercial purpose bluefish harvested from the EEZ after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.

(8) To purchase or otherwise receive for a commercial purpose bluefish harvested by a federally permitted vessel after the effective date of the notification published in the Federal Register stating that the commercial quota has been harvested.

(x) \* \* \*

(9) All bluefish possessed on board a party or charter vessel issued a permit under § 648.4(a)(8)(ii) are deemed to have been harvested from the EEZ.

10. Subpart J is revised to read as follows:

Subpart J—Management Measures for the Atlantic Bluefish Fishery

Sec.

- 648.160 Catch quotas and other restrictions.
648.161 Closures.
648.162 Minimum fish sizes.
648.163 Gear restrictions.
648.164 Possession restrictions.
648.165 Framework specifications.

§ 648.160 Catch quotas and other restrictions.

The fishing year is from January 1 through December 31.

(a) Annual review. The Bluefish Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the total allowable level of landings (TAL) and other restrictions necessary to achieve a target fishing mortality rate (F) of 0.51 in 1999 and 2000; a target F of 0.41 in 2001, 2002, and 2003; a target F of 0.31 in 2004, 2005, 2006, and 2007; and a target F of 0.36 thereafter: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than other trawls and gill nets on the mortality of bluefish; and any other relevant information.

(b) Recommended measures. Based on the annual review, the Bluefish Monitoring Committee shall recommend to the Coastal Migratory Committee of the Council and the Commission the following measures to assure that the F specified in paragraph (a) of this section will not be exceeded:

- (1) A TAL set from a range of 0 to the maximum allowed to achieve the specified F.
(2) Commercial minimum fish size.
(3) Minimum mesh size.
(4) Recreational possession limit set from a range of 0 to 20 bluefish to achieve the specified F.
(5) Recreational minimum fish size.
(6) Recreational season.
(7) Restrictions on gear other than other trawls and gill nets.

(c) Allocation of the TAL—(1) Recreational harvest limit. A total of 83 percent of the TAL will be allocated to the recreational fishery as a harvest limit.

(2) Commercial quota. A total of 17 percent of the TAL will be allocated to the commercial fishery as a quota. If 17 percent of the TAL is less than 10.5 million lb (4.8 million kg) and the

recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb (4.8 million kg) as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the TAL.

(d) *Annual fishing measures.* The Council's Coastal Migratory Committee shall review the recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the Coastal Migratory Committee shall recommend to the Council measures necessary to assure that the applicable specified F will not be exceeded. The Council shall review these recommendations and, based on the recommendations and any public comment, recommend to the Regional Administrator by September 1 measures necessary to assure that the applicable specified F will not be exceeded. The Council's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule in the **Federal Register** on or about October 15, to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial and recreational fisheries to assure that the applicable specified F will not be exceeded. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

(e) *Distribution of annual commercial quota.* (1) The annual commercial quota will be distributed to the states, based upon the following percentages:

**ANNUAL COMMERCIAL QUOTA SHARES**

STATE	PERCENTAGE
ME	0.6685
NH	0.4145
MA	6.7167
RI	6.8081
CT	1.2663
NY	10.3851
NJ	14.8162
DE	1.8782
MD	3.0018
VA	11.8795
NC	32.0608
SC	0.0352
GA	0.0095
FL	10.0597
TOTAL	100.0000

**Note:** The "Total" does not actually add up to 100.0000 because of rounding error.

(2) All bluefish landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the bluefish were harvested. Any overages of the commercial quota landed in any state will be deducted from that state's annual quota for the following year.

(f) *Quota transfers and combinations.* Any state implementing a state commercial quota for bluefish may request approval from the Regional Administrator to transfer part or all of its annual quota to one or more states. Two or more states implementing a state commercial quota for bluefish may request approval from the Regional Administrator to combine their quotas, or part of their quotas, into an overall regional quota. Requests for transfer or combination of commercial quotas for bluefish must be made by individual or joint letter(s) signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter(s) must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred or combined.

(1) Within 10 working days following the receipt of the letter(s) from the states involved, the Regional Administrator shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota or combine quotas, the Regional Administrator shall consider whether:

(i) The transfer or combination would preclude the overall annual quota from being fully harvested.

(ii) The transfer addresses an unforeseen variation or contingency in the fishery.

(iii) The transfer is consistent with the objectives of the Bluefish FMP and Magnuson-Stevens Act.

(2) The transfer of quota or the combination of quotas will be valid only for the calendar year for which the request was made and will be effective upon the filing by NMFS of a notification of the approval of the transfer or combination with the Office of the Federal Register.

(3) A state may not submit a request to transfer quota or combine quotas if a request to which it is party is pending before the Regional Administrator. A state may submit a new request when it receives notification that the Regional Administrator has disapproved the previous request or when notification of

the approval of the transfer or combination has been published in the **Federal Register**.

(4) If there is a quota overage among states involved in the combination of quotas at the end of the fishing year, the overage will be deducted from the following year's quota for each of the states involved in the combined quota. The deduction will be proportional, based on each state's relative share of the combined quota for the previous year. A transfer of quota or combination of quotas does not alter any state's percentage share of the overall quota specified in paragraph (e)(1) of this section.

(g) Based upon any changes in the landings data available from the states for the base years 1981-89, the Commission and the Council may recommend to the Regional Administrator that the states' shares specified in paragraph (e)(1) of this section be revised. The Council's and the Commission's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendation. The Regional Administrator shall review the recommendation of the Commission and the Council. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a revision in the state shares. After considering public comment, NMFS will publish a final rule in the **Federal Register** to implement the changes in allocation.

**§ 648.161 Closures.**

(a) *EEZ closure.* NMFS shall close the EEZ to fishing for bluefish by commercial vessels for the remainder of the calendar year by publishing notification in the **Federal Register** if the Regional Administrator determines that the inaction of one or more states will cause the applicable F specified in § 648.160(a) to be exceeded, or if the commercial fisheries in all states have been closed. NMFS may reopen the EEZ if earlier inaction by a state has been remedied by that state, or if commercial fisheries in one or more states have been reopened without causing the applicable specified F to be exceeded.

(b) *State quotas.* The Regional Administrator will monitor state commercial quotas based on dealer reports and other available information and shall determine the date when a state commercial quota will be harvested. NMFS shall publish notification in the **Federal Register** advising a state that, effective upon a specific date, its commercial quota has

been harvested and notifying vessel and dealer permit holders that no commercial quota is available for landing bluefish in that state.

**§ 648.162 Minimum fish sizes.**

If the Council determines through its annual review or framework adjustment process that minimum fish sizes are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objective, such measures will be enacted through the procedure specified in § 648.160(d) or 648.165.

**§ 648.163 Gear restrictions.**

If the Council determines through its annual review or framework adjustment process that gear restrictions are necessary to assure that the fishing mortality rate is not exceeded, or to attain other FMP objectives, such measures will be enacted through the procedure specified in §§ 648.160(d) or 648.165.

**§ 648.164 Possession restrictions.**

(a) No person shall possess more than 10 bluefish in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a bluefish commercial permit or is issued a bluefish dealer permit. Persons aboard a vessel that is not issued a bluefish commercial permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a bluefish commercial permit are not subject to the possession limit when not carrying passengers for hire and when the crew size does not exceed five for a party boat and three for a charter boat.

(b) Bluefish harvested by vessels subject to the possession limit with more than one person on board may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of bluefish on board by the number of persons on board, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

**§ 648.165 Framework specifications.**

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Bluefish FMP.

(1) *Adjustment process.* After a management action has been initiated,

the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and the opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational season, closed areas, commercial season, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource; and  
(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *Action by NMFS.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management

measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 35**

[Docket No. RM99-2-000]

**Regional Transmission Organizations**

Issued July 20, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of guidance for processing Order No. 2000 Filings.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is establishing and clarifying procedures regarding the filings related to the formation of Regional Transmission Organizations, as required by 18 CFR 35.34(c) and 35.34(h). These regulations were adopted in the Commission's Order No. 2000. (65 FR 809).

**FOR FURTHER INFORMATION CONTACT:** Brian R. Gish, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208-0996.

**SUPPLEMENTARY INFORMATION:**